

OPINION
44-90

May 4, 1944 (OPINION)

SCHOOL BOARDS

RE: Contracts

Your letter of May 4rd addressed to the Attorney General has been received and contents of same have been noted. The question you present is whether or not a member of the board of education of a special school district, who is engaged in the hardware and lumber business, may sell to the school district such supplies as are in daily use in light of sections 1246 and 1349 of the Compiled Laws for 1913. These sections read as follows:

"Section 1246. Compensation of Members. Must not be Interested in Contracts.) Each member of such board of education shall receive a compensation of one dollar and fifty cents for each meeting of such board actually attended by him; provided, that no compensation shall be allowed for more than one meeting in each calendar month. The members shall not be interested, directly or indirectly, in any contract for making any improvements or repairs, or for erecting any building or for furnishing any materials or supplies for their district".

"Section 1349. Speculation in Office Prohibited.) No school officer shall personally engage in the purchase of any school bonds or warrants no shall any such officer be personally interested in any contract requiring the expenditure of school funds except for the purchase of fuel and the procuring of insurance and such supplies as are in daily use, but not including furniture, or the expenditure of funds appropriated by the state, county, school corporation, or otherwise, for any special purpose connected with his office. Any violation of this section shall be a misdemeanor".

The two sections quoted are parts of chapter 266 of the Session Laws of 1911, which is a very long act. Section 1246 appears as section 139 of said chapter 266 and section 1349 appears as section 239 of this chapter.

Since these two sections appear in one bill enacted by the same Legislative session, it must necessarily follow that it was the intention of the Legislature that they should be construed together. Section 1246 deals with the compensation to which members of board of education are entitled and makes the general provision that such members shall not be interested directly or indirectly in any contract, etc. The purpose of section 1349 is to prohibit speculation in office by members of the board of education for private gain, and refers especially to the purchase of school bonds, warrants, and contracts requiring the expenditure of public funds, but it makes a specific exception with reference to purchase of

fuel and procuring of insurance and such supplies as are in daily use, but not including furniture, etc.

The question then arises as to what articles or items and supplies must be considered as being in daily use. You suggest such items as nails, screws, hinges, bolts for doors, mops, brooms, paint, boards, timbers, lime, cement, and other like articles used in making minor repairs or for supplying temporary shortages in necessary articles in daily use.

Section 1246 prohibits members from making any improvements or repairs, or for erecting any building or for furnishing any materials and supplies for their district. Section 1349 does not mention repairs of any kind but refers only to such supplies as are in daily use, I do not believe that section 1246 refers for instance to a pound of nails or a hinge to replace a broken one or a lock or a knob, or minor repairs which necessarily must be made whenever necessary. The reference to repairs in said section would rather apply to major repair jobs which would involve the expenditure of considerable funds of the district and would also require advertising for bids.

It is rather difficult to draw the line and the question is rather one of fact than of law, depending upon all of the circumstances, the immediate necessity, the amount of money involved and whether the repairs or articles needed may conveniently be obtained from others than members of the board of education.

I am inclined to agree with your construction upon the facts stated in your letter. We must assume that since the two sections are part of the same chapter and enacted by the same Legislative session, that it was the intent that such statutes should be construed together, so as not to be in conflict with each other.

It may be held, therefore, that section 1349 provides for an exception to the general rule where the situation and circumstances make it necessary that action must be taken in order to avoid needless waste and to permit the school to continue in uninterrupted session. It must be assumed that the members of the board will use judgment and discretion, and take only such action as may be necessary in the circumstances.

ALVIN C. STRUTZ
Attorney General